S.B.CIVIL WRIT PETITION NO.949/2002
No.3156050 Ex.Sep Umed Singh v. Union of India & Ors.
Date of Order :: 7th December, 2005
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. K.K.Shah, for the petitioners.
Mr. Pankaj Bohra]
Mr. Ravi Bhansali] for the respondents.

The petitioner was enrolled in Indian Army on 7.12.1965 and was invalided out from service w.e.f. 27.3.1968 due to “immature personality”. The competent authority after assessing disability of the petitioner at 30% allowed disability pension @ Rs.29/- per month to him w.e.f. 27.3.1968 to 18.1.1970. The petitioner in order to continue the disability pension beyond 18.1.1970 was brought before resurvey medical board to reassess his disability. The resurvey medical board on 3.2.1970 reassessed disability of the petitioner as 11.15% i.e. less than 20%. Accordingly disability pension was not allowed to be continued for the petitioner in accordance with para 173 of Pension Regulations (Part-I), 1961. The respondents under Army Instruction No.04/S/75 dated 19.12.1975 provided that where an individual is invalided out of service before completion of his prescribed encroachment/service limit on account of disability which is attributable or aggravated by Military Services and is assessed below 20%, he will be granted an award equal to service element of disability pension determined in the manner given in Regulation 183 Pension Regulation for Army (Part-I), 1961 read with appendix A to A-1 1.S.75. The benefit aforesaid was allowed w.e.f.

1.1.1973. This benefit was also allowed in all cases where a individual was granted disability pension but whose degree of disability subsequently fell down below 20%. The petitioner as stood invalided out prior to 1.1.1973 was not considered in accordance with the notification dated 19.12.1975. Challenge to the same is given by the petitioner in present writ petition.

It is contended by counsel for the petitioner that this Court in the case of Smt.Sinokhi v. Union of India & Ors., reported in 2002(3) RLR 184, held the cut off date i.e. of 1.1.1973 as referred in the notification dated 19.12.1975 arbitrary and violative of Article 14 of the Constitution of India. In the aforesaid case this Court also directed the respondents for application of Army Instructions dated 19.12.1975 to all army personnel irrespective of the date of their retirement. According to counsel for the petitioner the case of present petitioner is also required to be considered by the respondents in view of law laid down by this Court in the case of Smt.Sinokhi (supra).

I have considered the contention raised by counsel for the petitioner and also perused record of the case.

It is not at all disputed that the petitioner was invalided out from service on 27.3.1968 due to

"immature personality" and at the relevant time his disability was more than 20% and the same was found reduced at the time of reassessment on 18.1.1970. The respondents by notification dated 19.12.1975 allowed disability pension to the persons whose disability stood reduced on reassessment, however, effect to this decision was given from 1.1.1973. The cut off date mentioned in the order dated 19.12.1975 was declared illegal by this Court in the case of Smt.Sinokhi (supra). The petitioner in light of judgment of this Court referred above is certainly entitled to be considered for grant of pension in accordance with the notification dated 19.12.1975.

Consequently, this writ petition is allowed. The respondents are directed to consider case of the petitioner for grant of pension in accordance with the notification dated 19.12.1975. The compliance of this order is required to be made within a period of three months from today. The petitioner shall also be entitled for all arrears accrued to him in event of grant of pension in accordance with the notification dated 19.12.1975.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.